



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 20, 1996

Ms. Mandy Smithers  
Paralegal  
Denton County Criminal District Attorney's Office  
Counsel to the Sheriff  
127 N. Woodrow Lane  
Denton, Texas 76205

OR96-1723

Dear Ms. Smithers:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100845.

The Denton County Sheriff's Department (the "department"), which your office represents, received a request from an attorney for all information pertaining to his clients' arrest by the department, on or about February 22, 1996. The requestor also seeks "all responsive information prior to and following the arrest of my clients, including materials related to any confinement or detention of either or both of my clients." You assert that the submitted records at issue are confidential pursuant to Government Code chapter 411, and sections 552.103 and 552.108 of the Government Code.<sup>1</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Federal regulations prohibit the release of criminal history record information ("CHRI") maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency

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<sup>1</sup>You state that "criminal charges arising out of this incident are still pending in Denton County Criminal Court Number 1." You also state that the jail records have been turned over to the requestor, however, you seek to withhold any criminal history record information ("CHRI").

or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). Section 411.083 provides that any CHRI maintained by the Department of Public Safety (“DPS”) is confidential. Gov’t Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084. Therefore, the department must withhold any CHRI from the requestor.<sup>2</sup>

Section 552.108 excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime,” and “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution.” Gov’t Code § 552.108; see *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). We note, however, that information normally found on the front page of an offense report is generally considered public.<sup>3</sup> *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). We conclude that, except for front page offense report information, section 552.108 of the Government Code excepts the requested records from required public disclosure.<sup>4</sup> Although section 552.108 authorizes you to withhold the requested information, we note that since section 552.108 is discretionary with the governmental entity asserting the exception, you may choose to release all or part of the other information at issue that is not otherwise confidential by law. Gov’t Code § 552.007.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue

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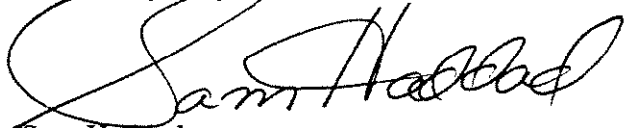
<sup>2</sup>CHRI generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”) is deemed confidential by federal and state law. The dissemination of CHRI obtained from the NCIC network is limited by federal law. See 28 C.F.R. § 20.1; Open Records Decision No. 565 (1990) at 10-12. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the CHRI except to another criminal justice agency for a criminal justice purpose. Gov’t Code § 411.089(b)(1). Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. Furthermore, any CHRI obtained from the Texas DPS or any other criminal justice agency must be withheld as provided by Government Code chapter 411, subchapter F.

<sup>3</sup>The content of the information determines whether it must be released in compliance with *Houston Chronicle*, not its literal location on the first page of an offense report. Open Records Decision No. 127 (1976) contains a summary of the types of information deemed public by *Houston Chronicle*.

<sup>4</sup>Similarly, section 552.103(a) cannot be invoked to withhold from public disclosure basic front page offense report information that has already been made available to defendant in criminal litigation. Open Records Decision No. 597 (1991). Since we resolve your request under section 552.108, we need not specifically address your claimed exception under section 552.103.

under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Sam Haddad". The signature is fluid and cursive, with a large initial "S" and "H".

Sam Haddad

Assistant Attorney General  
Open Records Division

SH/ch

Ref.: ID# 100845

Enclosures: Submitted documents

cc: Mr. David Heiman  
Law Offices of G. David Heiman  
1702 South Highway 121, Suite 604  
Lewisville, Texas 75067  
(w/o submitted documents)